IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 151 of 2000()

AGAINST THE ORDER 3.1.2000 IN CC.653/1998 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOCHI.

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APPELLANT: COMPLAINANT

M/S.UNITED TOURS & TRAVELS PVT.LTD.,
SREEKANDATH ROAD, RAVIPURAM,
KOCHI 16, REP.BY ITS BRANCH MANAGER
MR.T.V.JOSE.

BY ADV. SRI.JOMMY THARIAN

RESPONDENTS: ACCUSED

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1. **SASIKUMAR NARAYANAN, DEEPAM,**
   31/278 D, JUNIOR JANATHA ROAD,
   KOCHI 19.

2. **STATE OF KERALA, REP.BY**
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No. 151 of 2000

Dated this the 21st day of February, 2007

Judgment

This appeal is filed by the complainant against acquittal of the accused under section 256 (1) of the Code of Criminal Procedure. The complaint was filed for dishonour of cheque for insufficiency of funds. The case was, originally, filed before the Additional Chief Judicial Magistrate's Court, Ernakulam. After taking sworn statement of the complainant, the case was trnasferred to Judicial First Class Magistrate's Court-I, Kochi. The respondent/accused did not appear before the court even though the court granted several times for the appearance of the accused. On 8.10.1999, the trial court issued non-bailable warrant against the respondent/accused. The accused took bail on 17.11.1999 and the case was posted to 3.1.2000, but, the advocate's clerk noted the posting date as 3.2.2000, instead of 3.1.2000 and on 3.2.2000 when the counsel for the appellant along with the complainant appeared before the court, it was noticed that the case was actually posted on 3.1.2000 and the accused was acquitted on that day due to the absence of the complainant. The impugned order is a stereo-typed order without application of mind. Even though accused can be acquitted under

section 256 (1) of Cr.P.C. for the absence of the complainant, it should not be done mechanically. On the facts and circumstances of the case, the impugned order is set aside and the matter is remanded.

The complainant shall appear before the trial court on 26.3.2007. Notice sent by this court was evaded. I am not deciding the merits of the case. Trial court is directed to inform the date of posting to the advocate appearing for the first respondent/accused.

Appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.151 of 2000

Judgment

21-2-2007